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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 EDWARDO MUÑOZ, individually and on  
behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 7-ELEVEN, INC., a Texas corporation,

17 Defendant.

18 Case No. 2:18-cv-03893 RGK (AGR)

19 **DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

20 Date: May 20, 2019

Time: 9:00 a.m.

Place: Courtroom 850

Judge: Hon. R. Gary Klausner

21 *[Filed concurrently with Response to  
Plaintiff's Statement of Uncontroverted  
Facts and Request for Judicial Notice]*

22  
23 Complaint Filed: May 9, 2018  
First Am. Comp. Filed: July 9, 2018  
Trial Date: July 2, 2019

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1     **I. INTRODUCTION**

2         Plaintiff asks the Court to grant summary judgment and award statutory damages  
 3 to the class for a willful violation of the Fair Credit Reporting Act (“FCRA”) based only  
 4 on the text of a one-page background disclosure form (“Form”) he contends includes  
 5 “extraneous information.” His motion should be denied for at least three reasons.

6         First, Plaintiff has failed to establish standing under Article III because he has not  
 7 provided any evidence that would show he suffered an injury in fact vis-à-vis the Form  
 8 – let alone an injury in fact caused by 7-Eleven’s conduct. This is because although  
 9 Plaintiff’s Amended Complaint falsely alleged Plaintiff was confused by the extraneous  
 10 information in the Form, at deposition Plaintiff admitted he only spent about thirty  
 11 seconds reviewing the Form and only read a few sentences from it prior to executing it,  
 12 and when he read the Form in full (which is just one page) he actually understood it.  
 13 Incredibly, Plaintiff’s motion skips this fundamental threshold question altogether.

14         Second, summary judgment cannot be granted in favor of Plaintiff because the  
 15 Form complies with the FCRA. Plaintiff relies heavily on two Ninth Circuit decisions  
 16 to claim otherwise, but neither establishes that 7-Eleven’s Form violated the stand-alone  
 17 requirement. In fact, neither of these decisions is even relevant to that inquiry given the  
 18 Form does not contain provisions *Syed* and *Gilberg* held violated the FCRA and neither  
 19 explains what the disclosure can include.

20         Lastly, Plaintiff has not put forward any evidence that 7-Eleven willfully violated  
 21 the FCRA with the Form. On the contrary, to the extent there is case law that addresses  
 22 the propriety of the provisions in the Form being challenged by Plaintiff, applying that  
 23 case law would result in a finding that the Form is compliant.

24         For these reasons, and as explained in more detail below, Plaintiff’s Motion must  
 25 be denied, and the case dismissed.

26     **II. FACTUAL BACKGROUND**

27         During the application process, the manager of the 7-Eleven store where Plaintiff  
 28 applied informed Plaintiff that 7-Eleven would have to complete a background check on

1 him.<sup>1</sup> (Def.’s Response to Plaintiff’s Statement of Uncontroverted Facts and Additional  
 2 Uncontroverted Facts (“SGI”), ¶ 15.) Plaintiff agreed to this even though he understood  
 3 it may mean he would not receive a position. (*Id.*, ¶ 16.)

4 One of the documents Plaintiff completed as part of the new hire paperwork was  
 5 the Form, which he has attached to his complaints as an exhibit. (*Id.*, ¶ 17.) Although  
 6 Plaintiff does not allege that the Form failed to include any information required by the  
 7 FCRA, he nevertheless contends it was confusing because it allegedly included  
 8 extraneous information. (*See id.*, ¶¶ 18-19.) At his deposition, Plaintiff admitted the  
 9 following:

- 10 • He understood the Form was authorizing an investigation into his background prior  
 11 to his executing it;
- 12 • He only took approximately thirty seconds to review the Form before executing it;
- 13 • He only read a few sentences of the Form and disregarded the rest prior to  
 14 executing it;
- 15 • He did not ask the store manager – who was nearby while Plaintiff was completing  
 16 the new hire paperwork – or 7-Eleven’s HR any questions about the Form before  
 17 executing it; and
- 18 • When Plaintiff actually read the Form in its entirety, he understood it.

19 (*See id.*, ¶¶ 20-26.)

20 **III. PLAINTIFF’S MOTION SHOULD BE DENIED AND HIS CASE  
 21 DISMISSED BECAUSE HE LACKS STANDING**

22 **A. Plaintiff Must Prove The Form’s Provisions He Contends Violate 15  
 23 U.S.C. § 1681b(b)(2)(A)(i) Caused Him Actual Confusion For Standing**

24 A plaintiff must establish Article III standing in order to pursue a claim in federal  
 25 court. *See Dutta v. State Farm Mut. Auto. Ins. Co.*, 895 F.3d 1166, 1172 (9th Cir.  
 26

27 <sup>1</sup> Plaintiff’s motion ignores numerous material facts that are critical to the issues raised  
 28 in this case, which 7-Eleven set forth in its own Motion for Summary Judgment. (*See*  
 Dkt. No. 67-1.) Plaintiff’s failure to include or address these facts in his own Motion  
 should preclude judgment being granted in his favor by itself.

1 2018). To establish such standing, a plaintiff must prove: “(1) that he suffered an injury  
 2 in fact, (2) that there is a causal connection between the injury and the conduct  
 3 complained of, and (3) that it is likely, as opposed to merely speculative, that the injury  
 4 will be redressed by a favorable decision.” *See id.* at 1173 (internal quotation marks  
 5 omitted).

6 The plaintiff also bears the burden of proof to establish standing with the  
 7 manner and degree of evidence required at the successive stages of the  
 8 litigation. While at the pleading stage, general factual allegations of injury  
 9 resulting from the defendant’s conduct may suffice, in responding to a  
 10 summary judgment motion, the plaintiff can no longer rest on such mere  
 11 allegations, but must set forth by affidavit or other evidence specific facts,  
 12 which for purposes of the summary judgment motion will be taken to be  
 13 true.

14 *See Washington Envtl. Council v. Bellon*, 732 F.3d 1131, 1139 (9th Cir. 2013); *see also*  
 15 *Ruiz v. Shamrock Foods Co.*, 2018 WL 5099509, at \*6 (C.D. Cal. Aug. 22, 2018)  
 16 (noting that “at the summary judgment stage, Plaintiffs must provide evidence  
 17 demonstrating standing”); *Baghdasarian v. Amazon.com, Inc.*, 2009 WL 4823368, \*3-  
 18 \*6 (C.D. Cal. Dec. 9, 2009) (granting summary judgment to defendant on standing  
 19 grounds even though that court had previously held standing was adequately shown at  
 20 the class certification stage because burden of proof required for latter was more lenient  
 21 relative to showing required on summary judgment).

22 In cases premised on the allegation that a disclosure form violates 15 U.S.C. §  
 23 1681b(b)(2)(A)(i) because the disclosure improperly includes extraneous provisions in  
 24 violation of the statute, courts require that a plaintiff establish this allegedly extraneous  
 25 information caused them actual confusion in order to have Article III standing. *See,*  
 26 *e.g.*, *Ruiz*, 2018 WL 5099509, at \*5-\*6 (finding lack of standing even when disclosures  
 27 at issue included provisions that unequivocally violated 15 U.S.C. § 1681b(b)(2)(A)(i)’s  
 28 requirements because one plaintiff “testified that there was no portion of the Martech  
 disclosure and authorization he signed that he did not understand”, the other two  
 plaintiffs “did not even review the disclosure language in the Credential Check form  
 before signing”, and because “not only did Plaintiffs lack any confusion about the

1 disclosure and authorization forms, Plaintiffs were fully aware that background checks  
 2 were being procured"); *Groshek v. Time Warner Cable, Inc.*, 865 F.3d 884, 887-89 (7th  
 3 Cir. 2017); *Mitchell v. WinCo Foods, LLC*, 743 Fed. Appx. 889 (9th Cir. Nov. 29,  
 4 2018) (unpublished); *Williams v. Nichols Demox, Inc.*, 2018 WL 3046507, at \*3-5  
 5 (N.D. Cal. June 20, 2018); *Walker v. Realhome Servs. & Sols., Inc.*, 2019 WL 1225211,  
 6 at \*6-7 (N.D. Ga. Jan. 28, 2019).

7 **B. Plaintiff Was Not Confused By The Form**

8 Obviously recognizing confusion as the litmus test for standing, Plaintiff's  
 9 Amended Complaint alleges that "[t]he unnecessary inclusion of [ ] extraneous  
 10 information [in the Form] rendered the document confusing to Plaintiff[.]" (Dkt. No.  
 11 23, ¶ 17.) Although this allegation was enough to avoid a motion to dismiss challenge  
 12 on standing grounds, as explained above, allegations in a complaint are insufficient to  
 13 establish standing at the summary judgment stage. *See Bellon*, 732 F.3d at 1139.

14 As a review of Plaintiff's own deposition testimony shows, he can no longer  
 15 contend he was confused by any allegedly extraneous information in the Form because  
 16 in that deposition he admitted:

- 17 • He understood the Form was authorizing an investigation into his background prior  
 18 to his executing it;
- 19 • He had no problem with 7-Eleven conducting a criminal background check even  
 20 prior to his executing the Form;
- 21 • He only took approximately thirty seconds to review the Form before executing it;
- 22 • He only read a few sentences of the Form, and disregarded the rest prior to  
 23 executing it;
- 24 • He did not ask the store manager – who was nearby while Plaintiff was completing  
 25 the new hire paperwork – or 7-Eleven's HR any questions about the Form before  
 26 executing it despite knowing he could and should if he had any questions; and
- 27 • When Plaintiff actually read the Form in its entirety, he understood it.

1 (See Def.'s SGI, ¶¶ 20-26.) Given these facts, Plaintiff was not “deprived of a  
 2 meaningful opportunity to authorize the background check” – he just chose not to take  
 3 it. Moreover, he cannot claim the Form caused him confusion when, by his own  
 4 admission, he did not read it prior to executing it and, after he actually did read the one-  
 5 page Form in full, he admitted he understood it. (See *id.*); *see also Ruiz*, 2018 WL  
 6 5099509, at \*6 (finding lack of standing even when disclosures at issue included  
 7 liability waivers because one plaintiff “testified that there was no portion of the Martech  
 8 disclosure and authorization he signed that he did not understand”, the other two  
 9 plaintiffs “did not even review the disclosure language in the Credential Check form  
 10 before signing”, and because “not only did Plaintiffs lack any confusion about the  
 11 disclosure and authorization forms, Plaintiffs were fully aware that background checks  
 12 were being procured”); *accord Groshek*, 865 F.3d at 887-89; *Mitchell*, 743 Fed. Appx.  
 13 889 (unpublished); *Williams*, 2018 WL 3046507, at \*3-5; *Walker*, 2019 WL 1225211,  
 14 at \*6-7. As such, this Motion should be denied and the case dismissed given the record  
 15 does not support a finding that Plaintiff has Article III standing.

16 **IV. THE DISCLOSURE FORM AT ISSUE DOES NOT VIOLATE 15 U.S.C. §  
 17 1681B(B)(2)(A)(I)**

18 Plaintiff's claims are all premised on the contention that the Form violates 15  
 19 U.S.C. § 1681b(b)(2)(A)(i). Under that statute, before obtaining a background check on  
 20 a person, an employer must first provide the applicant with a written disclosure that is  
 21 both “clear and conspicuous” and “that consists solely of the disclosure itself.” *See* 15  
 22 U.S.C. § 1681b(b)(2)(A)(i). As explained below, Plaintiff's motion fails to show the  
 23 Form violates either of these requirements.

24 **A. The Form Does Not Violate The Standalone Requirement**

25 The requirement that a disclosure “consist[ ] solely of the disclosure” is  
 26 commonly referred to as the standalone requirement. *See Walker v. Fred Meyer*, 2018  
 27 WL 2455915, at \*3 (D. Or. May 7, 2018). Pursuant to this requirement, a “written  
 28 disclosure may not ‘be encumbered with extraneous information.’” *See id.* (quoting

1 *FTC Advisory Opinion to Coffey* (Feb. 11, 1998), available at  
 2 <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-coffey-02-11-98>.

3 Plaintiff's Motion makes two arguments as to why the Form allegedly violates  
 4 the standalone requirement. Neither withstands scrutiny.

5 Plaintiff's first and primary argument is that, according to Plaintiff, an employer  
 6 cannot include the information that must be disclosed for "investigative consumer  
 7 reports" and "consumer reports" that are not investigative within the same disclosure.  
 8 (See Mot. at 4:13-8:7.) As an initial matter, Plaintiff's Motion is misleading in its  
 9 characterization of an "investigative consumer report" because it is not separate and  
 10 distinct from a "consumer report" under the FCRA. (See Mot. at 4:20-5:7.) Rather, it is  
 11 a sub-type of consumer report that is created at least in part by interviews. *See* 15  
 12 U.S.C. §§ 1681a(d)(1), 1681a(e). Moreover, Plaintiff's Motion is also misleading in  
 13 claiming that 7-Eleven agrees its Form includes extraneous provisions as the dispute is  
 14 more accurately described as a dispute regarding what is and is not considered  
 15 extraneous under the standalone requirement.<sup>2</sup> *See, e.g., Culberson v. Walt Disney*  
 16 *Parks and Resorts*, 2019 WL 1594026, at \*4 (Ct. App. April 15, 2019) (noting although  
 17 it is true that 15 U.S.C. § 1681b(b)(2)(A)(i) includes a standalone requirement, "the  
 18 question remains what information may constitute the disclosure itself") (unpublished).

19 Turning to the merits, 7-Eleven notes that the FTC has held the opinion since at  
 20 least 1999 that it is possible for a disclosure to include the information necessary for all  
 21 consumer reports – investigative or not – without violating the standalone requirement,  
 22 and a court in this Circuit just last year held that a disclosure analogous to the Form that  
 23 did this *did not* violate the standalone requirement. *See Walker*, 2018 WL 2455915, at  
 24 \*5 (in holding form with analogous provisions did not violate Section 1681b(b)(2)(A)(i)  
 25 in dismissing FCRA claim, stating "the fact that Fred Meyer provided Walker with a  
 26 disclosure that discussed both consumer reports and investigative reports does not run

27  
 28 <sup>2</sup> In fact, it is difficult to imagine *any* disclosure meeting the standard Plaintiff  
 subjectively believes governs whether a disclosure meets the standalone requirement.

1 afoul of the FCRA” in citing to the Willner Opinion letter, available at  
 2 <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-willner-03-25-99>);  
 3 (Compare Def.’s Request for Judicial Notice (“RJN”), ¶ 1, Ex. A with Dkt. No. 23, Ex.  
 4 A.) In the hopes of avoiding these authorities, Plaintiff relies on the *Syed v. M-I, LLC*,  
 5 853 F.3d 492 (9th Cir. 2017) and *Gilberg v. Cal. Check Cashing Stores, LLC*, 913 F.3d  
 6 1167 (9th Cir. 2019) decisions. However, it is odd that Plaintiff has chosen to do so  
 7 given (1) both of the disclosures in *Syed* and *Gilberg* also included the information  
 8 necessary for all types of consumer reports – investigative or not; but (2) although both  
 9 decisions found *other* provisions of the disclosures at issue violated the standalone  
 10 requirement, they conspicuously *did not* find or even address the propriety of including  
 11 the information necessary for all types of consumer reports in the same disclosure. *See*  
 12 *Gilberg*, 913 F.3d at 1172, 1174-76; *Syed*, 853 F.3d at 500-02, 508 (Appendix A).  
 13 Thus, given neither decision addressed the propriety of including such information  
 14 despite the disclosures at issue doing so, if anything, to the extent they can be  
 15 considered relevant precedent on this issue they actually weigh in 7-Eleven’s favor. In  
 16 addition, neither of these decisions went so far as to hold that FTC guidance that has  
 17 been on the books for twenty years now is wrong. Further, as the California Courts of  
 18 Appeal just recognized, although these decisions do hold there are no exceptions to the  
 19 standalone requirement, “the question remains what information may constitute the  
 20 disclosure itself” following them. *See Culberson*, 2019 WL 1594026, at \*4  
 21 (unpublished). Therefore, for these reasons, Plaintiff placing his hopes on these  
 22 decisions was misplaced.

23 Plaintiff’s second argument on the standalone requirement is an attempt to equate  
 24 the sentence in the Form that “State statutory provisions may also provide additional  
 25 protections for consumer reports” with the *numerous*, detailed, and longwinded separate  
 26 state disclosures included in the disclosure in *Gilberg*. (See Mot. at 8:8-17; compare  
 27 Dkt. No. 23, Ex. A (sentence just before the Authorization)) with *Gilberg*, 913 F.3d at  
 28 1172-73. Given the significant differences between this one indisputedly accurate and

1 correct sentence in the Form, and the additional state law disclosures analyzed in  
 2 *Gilberg*, this argument is disingenuous at best. In any event, this challenge is not even  
 3 within the scope of this lawsuit given Plaintiff's Amended Complaint does not allege  
 4 this sentence violates the standalone requirement. (See Dkt. No. 23, ¶¶ 35-36); *see also*  
 5 *Fox v. Good Samaritan L.P.*, 801 F. Supp. 2d 883, 896 (N.D. Cal. 2010) (noting that  
 6 “[w]hile a summary judgment motion does go beyond the pleadings in the sense that it  
 7 tests the sufficiency of the evidence to *support the allegations of the complaint*, those  
 8 allegations still serve to frame – and limit – the issues”); *accord IV Solutions, Inc. v.*  
 9 *Conn. Gen. Life Ins. Co.*, 2015 WL 12843822, at \*12-\*15 (C.D. Cal. Jan. 29, 2015);  
 10 *Mattson v. Home Depot, Inc.*, 2012 WL 2342948, at \*4 (S.D. Cal. June 20, 2012).

11 In sum, for the reasons stated above, Plaintiff's Motion fails to show that the  
 12 Form violates the standalone requirement.

13 **B. The Form Does Not Violate The “Clear And Conspicuous”  
 14 Requirement**

15 A disclosure is “clear” under 15 U.S.C. § 1681b(b)(2)(A) if it is “reasonably  
 16 understandable”, and it is conspicuous under 15 U.S.C. § 1681b(b)(2)(A) if it is “readily  
 17 noticeable to the consumer.” *See Gilberg v. Cal. Check Cashing Stores, LLC*, 913 F.3d  
 18 1169, 1176 (9th Cir. 2019).

19 Here, there can be no genuine dispute that the Form is reasonably understandable  
 20 – Plaintiff himself admitted as much during his deposition. (See Def.'s SGI, ¶ 26.)  
 21 Similarly, there can be no reasonable dispute that the Form is “readily noticeable to the  
 22 consumer” given it is in legible font, and sets forth the relevant headings in bolded,  
 23 large, typeface. (See Dkt. No. 23, Ex. A.) Therefore, the Form meets the “clear and  
 24 conspicuous” requirement of 15 U.S.C. § 1681b(b)(2)(A)(i). *See, e.g., Newton v. Bank*  
 25 *of Am.*, 2015 WL 10435907, at \*5-8 (C.D. Cal. May 12, 2015) (in granting summary  
 26 judgment in reviewing an analogous form, finding these requirements were met because  
 27 the form “use[d] language that a lay person would understand” and “[t]he amount of  
 28

1 text is minimal with headings in boldface, capital font using a larger typeface than the  
 2 surrounding text"); (*Compare* Def.'s RJN, ¶ 2, Ex. B with Dkt. No. 23, Ex. A.)

3 Plaintiff's Motion does not contend otherwise as it does not include any actual  
 4 analysis on this issue, and rather, at best, makes this issue derivative to his standalone  
 5 requirement challenge. (*See, generally*, Mot. at 3:25-8:22, *see id.* at 4:4:6, 7:11-14,  
 6 8:20-22 (only portions of motion where Plaintiff contends the Form is unclear, and as a  
 7 review of each excerpt shows the basis of that claim is always premised on Plaintiff's  
 8 allegation that the Form violates the standalone requirement).) As such, Plaintiff's  
 9 Motion fails to show that the Form violates the "clear and conspicuous" requirement of  
 10 15 U.S.C. § 1681b(b)(2)(A)(i).

11 **V. PLAINTIFF HAS NO EVIDENCE THAT 7-ELEVEN WILLFULLY  
 12 VIOLATED THE FCRA**

13 The only monetary relief Plaintiff seeks is statutory damages under the FCRA.  
 14 (*See* Dkt. No. 23, ¶ 40.) As the Ninth Circuit recently explained,

15 To recover statutory damages for a violation of the FCRA, Appellants must  
 16 show that [the defendant] willfully failed to comply with the statute. A  
 17 willful violation of the FCRA occurs where a defendant knowingly or  
 18 recklessly violated the FCRA. Recklessness is an objective standard. A  
 19 defendant acts in reckless disregard when its action both is a violation under  
 a reasonable reading of the statute's terms and shows that the company ran a  
 risk of violating the law substantially greater than the risk associated with a  
 reading that was merely careless.

20 *See Shaw v. Experian Info. Sols., Inc.*, 891 F.3d 749, 760 (9th Cir. 2018) (internal  
 21 quotation marks and citations omitted)

22 Plaintiff once again relies primarily on *Gilberg* and *Syed* to contend 7-Eleven use  
 23 of the Form was a willful violation of the FCRA. (See Mot. at 8:23-12:4.) Once again,  
 24 that reliance is misplaced as those decisions do not support a finding that the Form  
 25 willfully violated the standalone requirement for the five reasons that follow.

26 First, as detailed in the above section, neither *Gilberg* nor *Syed* address the  
 27 propriety of the provisions in the Form Plaintiff contends violate the standalone  
 28 requirement. As such, they are irrelevant to this issue.

1       Second, there was no statute, regulatory guidance or case law that would have put  
 2 7-Eleven on notice at the time Plaintiff executed the Form that the provisions in the  
 3 Form Plaintiff claims are noncompliant. *See id.* In fact, other than the case law making  
 4 clear the inclusion of a liability waiver in a disclosure violates 15 U.S.C. §  
 5 1681b(b)(2)(A)(i)'s requirements – which the Form does not do – there is very little on-  
 6 point judicial or administrative authorities that analyze that statute's requirements as  
 7 applied to the provisions in the Form being challenged. *See Just v. Target Corp.*, 187 F.  
 8 Supp. 3d 1064, 1067-70 (D. Minn. 2016) (declining to decide whether an analogous  
 9 disclosure to the Form violated 15 U.S.C. § 1681b(b)(2)(A)(i)'s standalone requirement  
 10 because, even presuming if it did, the dearth of authority regarding its requirements  
 11 outside of liability waivers precluded a finding that a disclosure without such a waiver  
 12 could be considered a willful FCRA violation); (*Compare* Def.'s RJD, ¶ 4, Ex. D *with*  
 13 Dkt. No. 23, Ex. A.) In fact, to the extent there is case law addressing analogous  
 14 disclosures, those sources weigh in favor of finding that the Form is compliant. *See,*  
 15 *e.g.*, *Dawson v. Wonderful Pistachios & Almonds, LLC*, 2018 WL 5263063, at \*4-6  
 16 (C.D. Cal. April 27, 2018); *Walker*, 2018 WL 2455915, at \*3-5; *Reed*, 2017 WL  
 17 5633153, at \*3; *Newton*, 2015 WL 10435907, at \*5-8; (*Compare* Def.'s RJD, ¶¶ 1-5,  
 18 Exs. A-E *with* Dkt. No. 23, Ex. A.) Therefore, even if the Form is found to violate 15  
 19 U.S.C. § 1681b(b)(2)(A)(i)'s technical requirements, the violation could not be  
 20 considered willful given, to the extent there are authorities that analyze analogous  
 21 forms, those authorities would favor holding that the Form complied with 15 U.S.C. §  
 22 1681b(b)(2)(A)(i). *See id.*

23       Third, *Syed*'s willfulness analysis is focused solely on the inclusion of a liability  
 24 waiver in a disclosure form – as Plaintiff's Motion acknowledges. (*See* Motion at 9:17-  
 25 23.) The Form does not have such a waiver, which further highlights *Syed*'s  
 26 inapplicability.

27       Fourth, Plaintiff improperly attempts to use *Gilberg* to write out of existence the  
 28 willfulness requirement by claiming it stands for the proposition that “*any* surplusage”

1 in violation of the standalone requirement will *ipso facto* be a willful violation. (See  
 2 Mot. at 9:23-10:2.) The contention is based on a blatant misrepresentation of *Gilberg*,  
 3 though, as that opinion does not even use the word willfulness – let alone analyze the  
 4 issue. *See Gilberg*, 913 F.3d at 1174-78. Moreover, as the California Courts of Appeal  
 5 just held in *Culberson v. Walt Disney Parks and Resorts*, 2019 WL 1594026, at \*5-6  
 6 (Cal. Ct. App. April 15, 2019) (unpublished), such a contention lacks merit. In fact,  
 7 *Culberson* is particularly instructive as it involved a challenge to provisions in a  
 8 disclosure form analogous to those Plaintiff makes against the Form, the plaintiffs there  
 9 relied on *Syed* and *Gilberg* on willfulness too, and *Culberson* affirms a trial court’s  
 10 decision to grant summary judgment on a standalone requirement challenge. *See id.* at  
 11 \*3-\*6; (*see also* Def.’s RJN, ¶ 6, Ex. F.) For example, in *Culberson*, the Courts of  
 12 Appeal observed that the plaintiffs’ contentions regarding the alleged unambiguity of  
 13 the standalone requirement lacked merit because, although the statute does instruct that  
 14 a disclosure must consist solely of the disclosure, “the question remains what  
 15 information may constitute the disclosure itself.” *See id.* at \*4; (*see also* Opp’n at 7:23-  
 16 8:16.) *Culberson* also found it telling that the plaintiffs there – like here – had failed to  
 17 cite to *any* decisions holding a disclosure form analogous to the one at issue did not  
 18 comply with 15 U.S.C. § 1681b(b)(2)(A)(i)’s requirements, and, like here, the  
 19 *Culberson* court noted that to the extent there were authorities that had analyzed  
 20 analogous forms they weighed in favor of the employer defendant. *See id.* at \*4-\*5  
 21 (citing to both *Just v. Target Corp.*, 187 F. Supp. 3d 1064, 1067-70 (D. Minn. 2016)  
 22 and the *Walker* decision in support of this contention, as 7-Eleven did in its own motion  
 23 for summary judgment). Finally, *Culberson* also noted the inapplicability of both *Syed*  
 24 and *Gilberg* to the form at issue there. *See id.* at \*5-\*6. Specifically, it noted that  
 25 although those decisions make clear including a liability waiver or actual state law  
 26 disclosures in a disclosure violates the standalone requirement, “[n]either case  
 27 considered information similar to that in the Disney disclosure form [at issue there] or  
 28 opined on what information may constitute the FCRA disclosure itself.” *See id.* That is

1 the case here as well with the Form. Thus, in sum, Plaintiff's attempt to write-out of  
 2 existence the willfulness requirement on a 15 U.S.C. § 1681b(b)(2)(A)(i) claim with  
 3 *Gilberg* – i.e. a decision that does not even address the issue – lacks merit.

4 Finally, Plaintiff's reliance on the FTC *Willner* opinion is misplaced as that  
 5 opinion explicitly states that it is possible to include information required for both non-  
 6 investigative and investigative consumer reports in the same disclosure so long as the  
 7 disclosure remains “very limited.” *See* Willner Opinion letter, available at  
 8 <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-willner-03-25-99>; (*see*  
 9 *also* Oppn' at 8:17-9:8.) 7-Eleven respectfully submits that given the Form is just one-  
 10 page long, it was not reckless to believe the Form was consistent with this opinion –  
 11 especially when the *Walker* decision, which Plaintiff all but admitted would require the  
 12 Form be found compliant if applied in his opposition to 7-Eleven's summary judgment  
 13 motion, applied the *Willner* opinion to find an analogous form was compliant. *Walker*,  
 14 2018 WL 2455915, at \*3-5; (*see also* Dkt. 70 at 6:12-20.)

15 In sum, for the reasons explained above, Plaintiff's Motion fails to show as a  
 16 matter of law that 7-Eleven *willfully* violated the FCRA with the Form.

17 **VI. CONCLUSION**

18 Plaintiff's deposition testimony shows he lacks Article III standing, and, for the  
 19 reasons explained above, his Motion fails to show the Form violated the FCRA – let  
 20 alone that such a violation was willful. As such, his Motion should be denied, and this  
 21 case should be dismissed.

22  
 23 Dated: April 29, 2019

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 25  
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